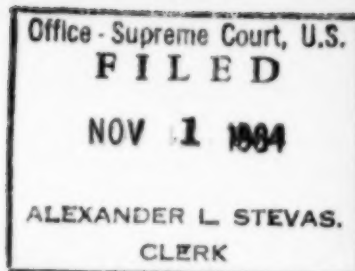


No. 84-384



**IN THE
SUPREME COURT OF THE UNITED STATES
October Term, 1984**

**GOULD, INC. and FIRST TRUST COMPANY OF
ST. PAUL, MINNESOTA,**

Petitioners,

v.

ROBERT J. ADAMS et al.,

Respondents.

**BRIEF OF RESPONDENTS ROBERT J. ADAMS, et al.,
IN OPPOSITION TO PETITION
FOR WRIT OF CERTIORARI TO
THE UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT**

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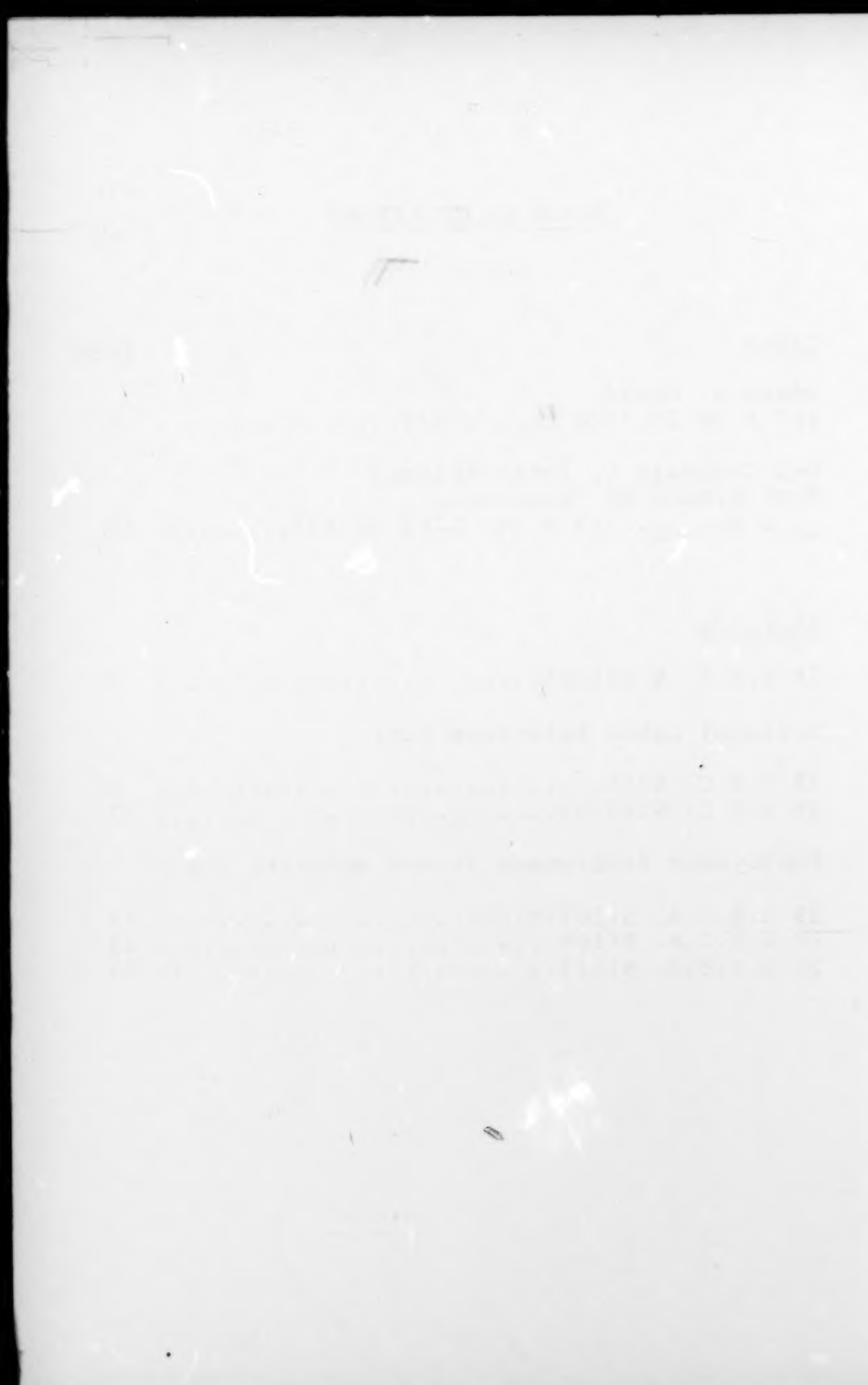


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UNIVERSITY OF CHICAGO

1

1900

THE UNIVERSITY OF CHICAGO, CHICAGO, ILL.

DEPARTMENT OF CHEMISTRY

REPORT OF THE DEPARTMENT OF CHEMISTRY

FOR THE YEAR 1900

BY THE DEPARTMENT OF CHEMISTRY

CHICAGO, ILL., 1901

Question Presented

Was the choice of a three year limitation consistent with this court's decisions?

Statement of the Case

1. Nature of the Case

This is an action by 62 former employees of Gould, Inc. ("Gould"), a multibillion dollar manufacturing concern. Plaintiffs' employment with Gould terminated in 1974 when Gould closed its Wilkening Plant where they worked. Plaintiffs had vested retirement rights under a Gould employees pension plan by virtue of 10 years or more of credited service with Gould. Since the termination of their employment, Gould has denied any pension obligations to them. The trustee of their pension fund has refused to pay them pensions as they reach age 55 when payments

are due.

The amended complaint asserts claims against Gould, for breach of its contractual obligations under the pension plan, and against First Trust Company of St. Paul, Minnesota ("First Trust"), the trustee of the pension fund involved, for breach of its fiduciary duty in refusing to pay pension benefits when due.

Jurisdiction is invoked, under the National Labor Relations Act, 29 U.S.C. §185, granting jurisdiction for suits arising out of violations of labor contracts.

2. Relevant Facts

In 1974, Gould closed down its Wilkening plant where plaintiffs were employed and terminated their employment. Workers at the Wilkening plant were covered under a Gould company-wide hourly-employee pension plan. This plan provided that persons who had

The Bureau of Investigation is a Federal agency of the Department of Justice. It is the largest and most powerful of the Federal law enforcement agencies. It is responsible for the investigation and prosecution of crimes against the United States and for the maintenance of the national security. It is also responsible for the investigation and prosecution of crimes against the laws of the United States.

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1. Federal Bureau of Investigation

The Bureau of Investigation is a Federal agency of the Department of Justice. It is the largest and most powerful of the Federal law enforcement agencies. It is responsible for the investigation and prosecution of crimes against the United States and for the maintenance of the national security. It is also responsible for the investigation and prosecution of crimes against the laws of the United States.

vested pension rights by virtue of 10 years or more of credited service were entitled to be paid pensions upon reaching age 55 in the event that their employment was terminated by Gould. Plaintiffs, most of whom had spent their entire working lives at the Wilkening plant, had vested pension rights when their jobs ended.

In connection with closing the Wilkening plant, Gould took the position that the pension fund allocable to the Wilkening employees was insufficient to continue full pensions to those who were already retired and drawing pensions (the retired pensioners). It directed First Trust to reduce pension payments to the retired pensioners. Local 416 of the United Automobile Workers ("the Union"), the collective bargaining representative of Wilkening workers, grieved that Gould had violated the Collective Bargaining Agreement because of its failure to provide full pensions to all employees who had a vested

right to a pension under the Gould pension plan, and requested that Gould pay all eligible employees the full amount of pensions they were entitled to under the plan. This grievance was ultimately submitted to arbitration.

On November 24, 1975, the arbitrator issued his opinion and award. He found that the company had breached the pension agreement by failing to fund the pension plan on a sound actuarial basis. Under the terms of the award, the company was directed to make further contributions to the pension fund, to be calculated on the basis of the actuarial assumptions that were in effect at the end of 1968. The award provided in material part:

"5. The Company is directed to make further contributions to the fund, using to calculate them the assumptions that were in effect at the end of 1968. These shall be in addition to the contributions already made.

"6. These additional contributions shall be for the period when the changed assumptions

right in a position under the same position
plan, and reported that under the
eligibility requirements of this section of
the law, they were entitled to have the
plan. This provision was, however,
subject to certain conditions.

On December 11, 1977, the Commission
issued its opinion and award. In that opinion,
the company had requested the Commission
to award it the full amount of the
award requested. Under the law,
of the award, the company was awarded an
award of \$100,000. The Commission also
found, to be calculated on the basis of the
actual expenses that were in effect at
the end of 1977. The award provided in
the award was:

"2. The Company is directed to
make further contributions to the
fund, going to maintain the
contribution that was in effect at
the end of 1977. These shall be
added to the contribution
already made.

"3. These additional
contributions shall be for the
period when the company was not

were made effective after 1968 until the Plan terminated.

"7. In the event of disagreement concerning the amount of these additional contributions, the Company's and the Union's actuaries shall negotiate the sums. If they cannot agree, their contentions in writing shall be forwarded to me and I will make the determination."

Gould and the Union, by negotiation, arrived at \$570,600 as the additional contribution required by the award. On March 15, 1977, they entered into a lengthy written agreement ("the agreement") purporting to "settle" the claim in arbitration, but actually deviating from the arbitration award. This agreement did not conform to the arbitrator's award. Under their agreement, no money was put into the common pension fund or into any other fund. Instead, Gould retained the money. It agreed to pay specified increased monthly pension payments only to persons who had already retired from employment with Gould before closing the Wilkening plant, who were named on a schedule attached to the agreement.

The signing of this agreement was entirely unauthorized by plaintiffs who had not been members of the Union since termination of their employment in 1974. The president of the Union signed the agreement without convening a membership meeting and without taking a vote on the subject or receiving any authorization from plaintiffs. No evidence showed authority of the Union or its president to act on behalf of plaintiffs or the other former employees, three years after the termination of their employment and a year and one half after the arbitrator's decision.

Gould and the Union never returned to the arbitrator and their agreement has never been embodied in the arbitrator's decision.

Certain plaintiffs reached age 55 after termination and when pension payments were due then. These persons have been denied monthly pension payments despite due demand.

3. Proceedings in the Lower Courts

Defendants moved for summary judgment, arguing that Gould had properly terminated the Plan pursuant to its terms. The defendants also argued that plaintiffs' claims had been resolved by the arbitration proceeding, at which the plaintiffs were represented by the Union, and that the plaintiffs were bound by the arbitrator's decision. The district court denied summary judgment, holding that the arbitrator's award could not dispose of the plaintiffs' "vested" rights in the Plan.

The district court then certified for appeal, pursuant to 28 U.S.C., §1292(b), "whether plaintiffs are bound by the results of the arbitration award between Gould and their collective bargaining representative and thereby barred from this suit." The court of appeals allowed the appeal, and concluded they were. Adams v. Gould, 687

F.2d 27 (3rd Cir. 1982).

The certified question involved the power of the Union to negotiate for the vested employees concerning their rights after their employment at the Wilkening plant had ended. The court held that arbitration was a form of adjudication, not negotiation, and that therefore the rule against allowing a Union to negotiate away the vested rights of its members did not apply. The court reversed the judgment of the district court and directed that summary judgment be entered for the defendants. On October 7, 1982, the district court entered summary judgment.

Plaintiffs moved to alter or amend the judgment and for leave to file a second amended complaint.

The proposed second amended complaint adopted the arbitrator's decision that Gould had underfunded the pension fund by \$570,600. It claimed that Gould had breached its contractual obligations under the pension

The certified question involved the power of the Court to require the parties to submit evidence concerning their dispute after their respective positions at the hearing had ended. The Court held that the question was a matter of administration, not jurisdiction, and that therefore the Court's power was not exhausted by its decision in the earlier case. The Court held that the parties' failure to submit evidence at the hearing was a matter of administration, not jurisdiction, and that therefore the Court's power was not exhausted by its decision in the earlier case. The Court held that the parties' failure to submit evidence at the hearing was a matter of administration, not jurisdiction, and that therefore the Court's power was not exhausted by its decision in the earlier case.

Blair's motion to set aside the judgment and for leave to file a second amended complaint.

The proposed second amended complaint alleged that Blair's motion to set aside the judgment and for leave to file a second amended complaint was timely and that Blair was entitled to a new trial.

plan as interpreted by the arbitrator in failing to place the \$570,600 admitted underfunding into the common pension fund in which plaintiffs had a vested interest.

Plaintiffs further claimed that the union breached its duty of fair representation in entering into the agreement with the company that permitted the company to divest the plaintiffs of their rights in the underfunding of their pension plan and that any agreement between the company and the union was therefore void against plaintiffs.

On April 14, 1983, the district judge denied plaintiffs' motion, without opinion, and plaintiffs appealed. The court of appeals reversed holding: (1) that it was an abuse of discretion to deny the motion for amendment under the circumstances; and, (2) that the three year statute of limitations established under 29 U.S.C.A. §1113, of the Employment Retirement Income Security Act

plan as suggested by the Director in
writing to him the 22nd, and which
relating to the same person that is
which plaintiff has a vested interest.

Plaintiff further claims that the
same person is the owner of the
corporation is relating into the corporation
with the company and plaintiff has a right
in the corporation of their rights in
the corporation of their rights in
and any agreement between the company and
the person who plaintiff has a vested
interest in.

On April 14, 1941, the District Judge
ordered plaintiff's motion without prejudice.
and plaintiff appealed. The court of
appeals reversed holding: (1) that it was an
error of discretion to deny the motion for
summary judgment under the circumstances; and, (2)
that the three year statute of limitations
established under 28 U.S.C. 2412, of the
Employment Retirement Income Security Act.

("ERISA") applies to the plaintiffs' proposed claims.

Argument

The choice of the three year limitations period is consistent with this court's decisions.

The court of appeals followed this court's holding in Del Costello v. International Brotherhood of Teamsters, __ U.S. ___, 103 S. Ct. 2281 (1983), that a three year limitations period applied. The court below reasoned (16a - 18a) that Del Costello, while stressing the desirability of a uniform national limitations period in Vaca v. Sipes cases, did not preclude the use of a different federal statutory period where the policies underlying the use of the six month statutory period derived from Section 10(b) of the National Labor Relations Act, 29

Exhibit.

Argument

The choice of the three year
limitation period is consistent
with this court's findings.

The court of appeals followed this
court's holding in 1st Circuit.
International Brotherhood of Teamsters,
U.S. ___, 102 S. Ct. 1181 (1991), that a
three year limitation period applies. The
court below reasoned (102 S. Ct. 1181) that 1st
Circuit, while assessing the timeliness of
a motion national limitation period in 1st
Circuit cases, did not prescribe the use of
a different federal statutory period where
the policies underlying the use of the
three year period derived from federal
10(b) of the National Labor Relations Act. 10

U.S.C. §160(b), were inapplicable.

The court below held that the three year limitations period under ERISA should apply. The court observed that a major justification for application of the relatively short limitations period for unfair labor practice suits is the need to resolve such disputes quickly to preserve labor peace. The court also observed that employees might not be aware of a pension grievance immediately because a violation of a pension fund agreement would not have an effect on their day to day working environment.

Plaintiffs' claim that their pension plan was part of a company-wide Gould pension plan for all of its hourly employees and that, when Gould closed down the Wilkening Plant, the pension plan was only partially terminated with respect to this covered group of employees. The Gould hourly employees pension plan still continues. Gould's pension benefits to its retired Wilkening

workers are being paid, in part, out of the pension fund for this plan, with a supplemental annuity from Gould.

The arbitrator found that Gould had underfunded the pension fund with respect to the Wilkening group of workers and that the amount of the underfunding should be placed in the pension fund. Gould and the Union then agreed that the amount of the underfunding was \$570,600. Instead of placing the money in the pension fund, however, Gould and the Union entered into the agreement in 1977, whereby Gould was permitted to retain the \$570,600 and to pay a supplemental annuity to named persons that were retired prior to the Wilkening plant closing. This agreement by the Union, allowing the employer to retain the use of pension funds, was a prohibited transaction under ERISA. 29 U.S.C.A. §1103(c)(1) provides:

" . . . the assets of a plan shall never inure to the benefit of any employer and shall be held for the exclusive purposes of providing benefits to participants in the

plan and their beneficiaries and defraying reasonable expenses of administering the plan."

29 U.S.C.A., §1106 provides:

"Prohibited transactions

"(1) A fiduciary with respect to a plan shall not cause the plan to engage in a transaction, if he knows or should know that such transaction constitutes a direct or indirect . . .

"(B) lending of money or other extension of credit between the plan and a party in interest."

29 U.S.C.A., §1113 provides:

"Limitation of actions

"(a) No action may be commenced under this subchapter with respect to a fiduciary's breach of any responsibility, duty, or obligation under this part, or with respect to a violation of this part, after the earlier of -- . . .

"(2) three years after the earliest date (A) on which the plaintiff had actual knowledge of the breach or violation, or (B) on which a report from which he could reasonably be expected to have obtained knowledge of such breach or violation was filed with the Secretary under this subchapter;"

The actions by Gould make clear that the three year statute is proper. Gould retained

plan and their participation and
deliberately caused his suspension of
administration of the plan.

IN U.S.C.A. Title 18, Section 1585

"Prohibited Transactions"

"(1) A fiduciary who respects
to a plan shall not cause the plan
to engage in a transaction if he
knows or should know that such
transaction constitutes a direct or
indirect

"(2) A plan shall not engage in a
transaction if it knows or should
know that such transaction is a
prohibited transaction."

IN U.S.C.A. Title 18, Section 1585

"Violation of Section"

"(1) A person who is a
fiduciary of a plan shall not
engage in a transaction if he
knows or should know that such
transaction constitutes a direct or
indirect

"(2) A plan shall not engage in a
transaction if it knows or should
know that such transaction is a
prohibited transaction."

The actions by which said plan shall the
three year statute is proper. Said statute

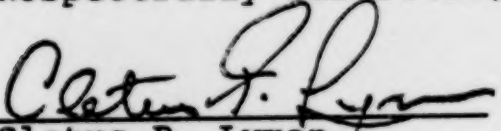
the \$570,600 admitted underfunding for use in its own business while committing itself to pay a supplemental annuity to certain named retired persons. The Union and Gould thus agreed to a prohibited transaction whereby the pension fund was lending \$570,600 to Gould.

Plaintiffs' vested pension rights were substantially impaired by the agreement. They were divested of any right to participate in the \$570,600 admitted underfunding of their pension fund. If all the retired persons receiving supplemental annuities from Gould were to die prematurely, only Gould would benefit.

Conclusion

WHEREFORE, the petition for certiorari
should be denied.

Respectfully submitted,


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